IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

MFA.No. 608 of 1995(A)

OS(ARB.)183/1992 of SUB COURT, MAVELIKKARA
.....

APPELLANT:

C.S.PRAKASH, CHENNOTHU HOUSE,
KEEZHILLAM P.O.,
PERUMBAVOOR.

BY ADV. SRI.P.JACOB VARGHESE

RESPONDENTS:

THE CHAIRMAN & MANAGING DIRECTOR,
NATIONAL THERMAL POWER CORPORATION,
LIMITED , NTPC BHAVAN, SCOPE-COMPLEX,
7 INSTITUTIONAL AREA,
LODHI ROAD, NEW DELHI.

BY ADV. SRI.B.S.KRISHNAN (SR.)
SRI.K.ANAND

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.608 OF 1995

Dated 10th July, 2007

JUDGMENT

Koshy,J.

Appellant is the plaintiff in O.S.(Arbitration) No.183 of 1992 on the file of the Sub Court, Mavelikara. Appellant was awarded contract for the work of construction of boundary wall in temporary township (Phase I) at the project of the defendant at Kayamkulam. The letter of award was issued on 20.7.1990. Time of completion was fixed as four months and the probable amount of contract was Rs.5,74,588.72. The contract was not completed within the specified period. According to the plaintiff, he incurred a loss of Rs.1,32,300/=. As per the contract, work has to be completed on or before 3.12.1990, but, only 60% of the work was completed. Balance 40% of the work was completed after the expiry of the stipulated period. When the bills were prepared, appellant has written by Ext.A5 letter dated 14.1.1991 that many disputes are pending. On 28.4.1991 a `No Demand Certificate' was issued' by the appellant and on 17.5.1991 amount as per the bill was received. Ext.B2 shows that amount was accepted in full and final settlement of the claim. It appears that an unsigned advocate notice was issued demanding fresh claim on 21.12.1991 after more than seven

months of the `No Demand Certificate' and six months of receipt of the amount. It was replied by Ext.A8 letter stating that contract was already came to an end. Here, request for appointment of Arbitrator was denied and the appellant approached the civil court. The court found that there is already accord and satisfaction and court has already decided the matter.

2. Appellant has relied on the decision of the Apex Court in ***Chairman and MD, NTPC Ltd.*** v. ***Reshmi Constructions, Builders & Contractors*** ((2004) 2 SCC 663) in an appeal filed from the Division Bench judgment of this court in M.F.A.298 of 1995 in which one of us (Justice J.B.Koshy) was a member. There it was found that the disputes as regards the bills arose prior to the acceptance of the bill and immediately after receiving the payment, petitioner lodged its protest on the very same day and reiterated its claim. In this case, after the `No Demand Certificate' and after receipt of payment, more than six months have elapsed when an unsigned advocate notice was sent demanding fresh claim and, therefore, the above decision is of no help to the appellant. On the admitted facts of the case, since the demand was received after six months of the acceptance of the amount in full and final

settlement of the claim, we are of the opinion that demand to appoint an arbitrator was rightly rejected by the respondent. Learned Sub Judge has considered the matter correctly and we see no reason to interfere in the matter.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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